

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of September 26, 2013

Members Present

Richard Freeburn  
Jeff Staub  
Sara Jane Cate  
Watson Fisher

Also in Attendance

James Turner  
Dianne Moran

**Docket 1344**

**Applicant:** Andrew Rose  
  
**Address:** 1601 Buckingham Road  
Harrisburg, PA 17111  
  
**Property:** 1601 Buckingham Road  
Harrisburg, PA 17111

Section 403.D.8.c.(1)(a) Front yard fences located in the minimum front yard of a lot in a residential district shall be an open-type fence (such as picket, wrought iron, vinyl post, chain link, or split rail) with a minimum ratio of 1:1 of open to structural areas; and

Section 403.D.8.c.(1)(b) Front yard fences located in the minimum front yard of a lot in a residential district shall not exceed four feet in height.

Section 403.D.8.c.(2) On a corner lot, a fence or wall shall meet the same requirements along both streets as would apply within a minimum front yard. However, a fence that only extends behind the rear of a dwelling may have a maximum height of 6.5 feet along on of the streets, other than the street that is along the front of the dwelling.

The Applicant seeks a variance to construct a fence that exceeds the four-foot height limitation in an area between the rear and front of the house. The applicant also seeks to construct a closed type fence along the Union Deposit Road side of the house.

**Grounds:** Section 403.D.8 Fences and Walls  
  
**Fees Paid:** August 30, 2013  
  
**Property Posted:** September 17, 2013

Advertisement:                      Appeared in The Paxton Herald on September 11, 2013 and September 18, 2013.

The hearing began at 7:01 p.m.

Mr. Freeburn questioned if the applicant agreed to submit a copy of the site plan and application to the Township as exhibits. Mr. Rose answered yes.

Mr. Freeburn swore in Andrew Rose and Kelly Skiles, 1604 Buckingham Road, Harrisburg, PA 17110.

Mr. Freeburn swore in Dianne Moran, Zoning and Hearing Officer for Lower Paxton Township.

Mr. Freeburn questioned if the appropriate fees were paid for this application and was the property posted. Ms. Dianne Moran advised that the appropriate fees were paid on August 30, 2013. The proper advertisements appeared in The Paxton Herald on September 11, 2013 and September 18, 2013. The hearing notices were posted on September 17, 2013.

Mr. Freeburn requested Ms. Moran to explain the reason for the variance request. Ms. Moran explained that the variance request is for Section 403.D.8.c.(1)(a) Front yard fences located in the minimum front yard of a lot in a residential district shall be an open-type fence (such as picket, wrought iron, vinyl post, chain link, or split rail) with a minimum ratio of 1:1 of open to structural areas; and Section 403.D.8.c.(1)(b) Front yard fences located in the minimum front yard of a lot in a residential district shall not exceed four feet in height; and Section 403.D.8.c.(2) On a corner lot, a fence or wall shall meet the same requirements along both streets as would apply within a minimum front yard. However, a fence that only extends behind the rear of a dwelling may have a maximum height of 6.5 feet along on of the streets, other than the street that is along the front of the dwelling.

Ms. Moran explained that the Applicant seeks a variance to construct a fence that exceeds the four-foot height limitation in an area between the rear and front of the house. The applicant also seeks to construct a closed type fence along the Union Deposit Road side of the house.

Mr. Freeburn introduced the members of the Zoning Hearing Board to the applicant.

Mr. Rose asked Mr. Freeburn if the members had a copy of the application letter. Mr. Freeburn responded that Mr. Rose did not have to read the letter. He noted that the members have reviewed the letter and it has been made part of the record already. He requested Mr. Rose to tell the Board, in his own words, what he would like to do with the property and why he feels that a variance is appropriate in this case.

Mr. Rose noted that there are two basic ideas that he is asking for in the variance, the first of which is the approval to be allowed to exceed the current limitations of the minimum front yard fence from the rear of the home to the front of the home for the fence. He noted that the height that he is looking for is six to six and a half feet depending on how it is cut. He noted that

he is looking to increase the height from the four feet that is required to ensure the safety of his dog or any future dog or any children that he may have. He noted that the four foot maximum is a great concern to him. He noted that Ms. Skiles parents come over to visit often and they have two dogs and one is very big. Ms. Skiles explained that one is a German Shepherd that has already proved that she can jump a four foot fence.

Mr. Rose noted in the planning of the fence he would like to have it go beyond the rear of the home to the front because of the contour of the land that is adjacent to the rear of the home. He noted that it is pretty hilly. He noted from an installation standpoint, it would be a lot easier to install the fence on a flat piece of ground. Ms. Skiles noted that it is still pretty far back from the site line as their house sits back further than most houses from the site line.

Mr. Rose noted that they had the land survived and where they want to put the fence is well within the site line and setbacks and all of that. He requested to extend the height in that little piece in the front to the rear of the home to six feet for those reasons.

Mr. Rose noted that the second piece of the variance is the style of fence. He explained that he is planning to install a closed style fence for a number of reasons. He noted if he has his dog in the yard she tends to bark at people who walk by, cars driving by and other animals. He noted that he does not want the dog to be a disturbance to the neighbors. He noted that he just came from an area where people had an open style aluminum fence and there were a couple of dogs at that home and every time he walked by the dogs would bark. He noted that he did not mind but he does not want that situation for his neighbors.

Mr. Rose noted that noise is the other factor as their home is located along Union Deposit Road and the cars create a lot of noise driving 35 mph and faster. He noted that he would like to cut down on the noise from that location. He explained that there is also the element of children, if a child sees something on the other side of the fence they tend to get curious and he wanted it to be more restricted so that... we are actually having some people from out of town this weekend and they have children. He noted he was thinking the other day if he had children and had an open fence he would be concerned about being so close to the road, especially with their dog as he would not want her to get lose. Ms. Skiles noted having a closed fence will deter her dog from digging under the fence if she sees something on the other side like a rabbit or squirrel or by trying to jump over the fence.

Mr. Freeburn questioned if there will be an access door from the home into the fenced-in area. Mr. Rose answered yes. Ms. Cate noted that there isn't one now. Mr. Freeburn noted when he looked at the picture trying to figure out...Ms. Cate noted that there is no door by the side of your home. Mr. Rose noted the picture that you are looking at is taken from the side of the house, and if you look beyond the corner of the home you will see a little portion of a deck, that is the rear of the home and there is a door from that deck that goes into the home.

Ms. Cate questioned if Mr. Rose if he planned to extend the fence that far as she thought it was only to the end of the home. Mr. Rose answered that the fence would come from the end of the house towards where you are looking in the picture and all the way around the property. Ms. Cate noted that is not the way it looks on the drawing.

Ms. Moran directed Mr. Rose to approach the Board to further explain. Mr. Rose explained that the fence would go from the front portion of the house all the way around to this piece of the house. Mr. Freeburn noted that Mr. Rose was referring to page three on a fax transmittal sheet. He noted that there are two different drawings. Mr. Rose noted that the fencing people drew two different estimates for him. He noted that the goal is to have the entire areas behind the house fenced in. He noted that the height restriction for the back and side is 6.5 feet. He noted that the shaded area is to show what area the variance is for. He noted that he is asking for the height restriction for that area.

Mr. Freeburn questioned when you say the shaded in area; you are referring to page two of the fax transmittal. Mr. Rose noted that is correct. He noted that the open style fence would be the entire area along Union Deposit Road. He noted that he would like the entire length of 146 feet to be closed. Mr. Freeburn questioned what about the other side of the house. Mr. Rose noted explained that there is no height restriction other than 6.5 feet which is what he planned to do.

Mr. Freeburn noted if the fence extended from the back of the house over to the line that is 146 feet would the 146 feet, by ordinance, have to be four feet. Ms. Moran answered once he reaches the rear of the house, it may be 6.5 feet in height but it has to be an open type fence. He noted that he is asking for a variance to provide privacy fencing and for height for the fencing that extends from the back of the house to the front of the house. Mr. Freeburn noted that the fence that abuts the front of the house must be four feet tall. Ms. Moran noted that was correct. Mr. Freeburn noted that it should be open. Ms. Moran answered that was correct.

Mr. Freeburn questioned what about the area on the other side of the house that shows a gate and is listed as 52 inches. He questioned if that is supposed to be closed and four feet tall as well. Ms. Moran answered that he is out of the front yard setback at that location so it can be 6.5 feet.

Mr. Freeburn noted to clarify Mr. Rose's testimony, at the beginning he mentioned that he wanted the fence to be six or six and half feet tall and he suggested for you purpose you need to be clear that what you are proposing is six and one half feet so if someone goes out later and it is actually six and one half feet, you are not exceeding what you were given in the variance. Mr. Rose stated that with the type of fence that he was ordering, it is going to be six feet but they have pieces that are on top. Mr. Freeburn suggested that Mr. Rose should say is that it will be six and one half feet. Mr. Rose agreed.

Mr. Staub questioned why it was necessary to have this area fenced in. He noted that there is a large area without having the area adjacent to the side of the house fenced in. He noted a variance would not be needed if you did not fence that area in. Mr. Rose answered that there is a two-fold concern, the contour of the land and it sits on a hill and the installation and aesthetics as it would be much simpler to install the fence at the front edge of the house.

Mr. Freeburn noted the photograph that is attached to the application; he is trying to determine where the fence will go back, noting that there is a red barn like structure shown in the

picture. He questioned if the fence was going back to the red barn. Mr. Rose answered that the red barn sits on his neighbors land to the rear. Mr. Freeburn noted if he was looking at page three of the fax where is the barn located on the plan. Ms. Cate noted that there is already a fence in the backyard. Mr. Rose explained that fence is on his property and is used to fence in the pool. Mr. Freeburn questioned if the proposed fence would meet the pool fence. Mr. Rose answered that it would go beyond it, closer to the barn along the property line. Mr. Freeburn questioned if it would intersect with the pool fence. Mr. Rose answered that it would not intersect, it would go beyond. Mr. Freeburn requested Mr. Rose to draw the barn and pool on his paper and he would provide it as an exhibit to Mr. Turner.

Mr. Rose noted that the neighbor with the barn is Paul Valencia. He explained that he went around to his neighbors to see if they were okay with the fence and they were.

Mr. Freeburn noted that the pool fence would be inside the proposed fence. Mr. Rose noted that was correct.

Mr. Freeburn questioned why there are contour issues for the front fence. Mr. Rose explained that it is only for the area around the side of the house. He noted if you look at the picture you can see the rear of the home and there is a hill that is hard to show in the picture. He noted that the fence would extend beyond what is shown in the picture. He noted, in terms of installation it would be quite a slope. Ms. Skiles explained that they were told that it would be difficult to install the gate and to open and close it and that we would have problems in the future; whereas if we put the fence lower down where the land is more flat there would be no issues. Mr. Freeburn noted that it is the contour of the land that is the issue and the fence installer is telling you the front would be better. Mr. Rose noted that the gate was a big issue. Ms. Cate questioned what was on the other side of the house. Mr. Rose answered that it was another gate.

Mr. Fisher questioned if the privacy fence would go the whole length of the side for Union Deposit Road. Mr. Rose answered yes. He noted that he wished he could show everyone this in person but the plan is for the entire length of the property along Union Deposit Road, noting that his concern is the traffic, the dog being able to see the traffic and all of that and that is the reason for the privacy fence. Mr. Fisher questioned if it would be a separate area. Mr. Rose explained that the second page shows a second estimate done by the fence installer. Mr. Freeburn noted that it was another alternative. Mr. Rose noted that they drew up two different plans for him. Mr. Freeburn noted that page three is what they are proposing.

Mr. Staub questioned if the fence would have been located behind the front yard setback would it make a difference in regards to the variance. He noted if the setback would have been 25 feet and they set the fence at 26 feet, would they be entitled to a 6.5 foot fence. Ms. Moran answered, behind the rear of the home they would have but it still has to be open. Mr. Rose noted that he has a stormwater easement along that location.

Mr. Freeburn noted that Goggle Earth takes good pictures.

Ms. Cate noted that most of the neighbors who signed the sheets live across the street from your home. Mr. Rose explained that he has a neighbor who is next to him and one behind

him who signed, and the rest are across the street from Union Deposit Road. Mr. Freeburn questioned if he talked to all of his neighbors. Mr. Rose answered that he did not talk to all of them but he talked to both direct neighbors that would have the fence abutting their property and they both signed papers that are in the packet. He noted that he spoke to the neighbors across Union Deposit Road. Ms. Skiles noted that one neighbor said she would sign but has been on vacation.

Mr. Freeburn questioned if this would alter the character of the neighborhood. Mr. Rose answered no and suggested that it would improve it.

Mr. Freeburn questioned if the Board members had any questions. No response was provided.

Mr. Freeburn questioned if anyone in the audience wished to be heard in regards to the application. No response was heard.

Mr. Freeburn noted that the Board has 45 days to render a decision with respect to this application and he questioned if any members of the Board wish to take action at this time on Docket 1344.

Ms. Cate made a motion to approve the variance. Mr. Freeburn seconded the motion.

Mr. Staub questioned the color of the fence. Mr. Skiles answered that it will be gray to match the house, as it is a little more expensive or they may go with white. Mr. Staub questioned if it would be orange. Ms. Skiles answered no.

Mr. Freeburn requested Mr. Turner to conduct a roll call vote: Mr. Fisher, aye; Mr. Staub, aye; Mrs. Cate, aye; and Mr. Freeburn, aye. Mr. Freeburn noted that the application has been granted.

Mr. Rose questioned when he could start the project. Mr. Turner answered 30 days after the decision is signed. He noted that normally that occurs at the next meeting and that is scheduled for November 7<sup>th</sup>. He noted if he is able to write the decision and the Board members are available to sign it earlier, staff will let him know. He noted that he should not start construction before the appeal time is up as he could be made to stop the work and remove it if there is a successful appeal. Ms. Moran noted that she could help Mr. Rose with his questions concerning the necessary permits.

The hearing ended at 7:28 p.m.

Respectfully submitted,

Maureen Heberle  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
ANDREW ROSE : DOCKET NO. 1344

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance to erect a privacy fence within the front yard with a height of 6 feet. A hearing on the application was held on September 26, 2013.

#### **Facts**

1. The applicant and owner of the property in question is Andrew Rose of 1601 Buckingham Road, Harrisburg PA 17111. Also appearing with the applicant was Kerry Skiles, his fiancée.

2. The property in question is located on the northeast corner of Union Deposit Road and Buckingham Rd and consists of an irregularly shaped lot with a width varying from 63 feet in the front to 158 feet in the rear. The frontage along Union Deposit Road is approximately 220 feet. The property is improved with a single family dwelling known as 1601 Buckingham Road which is oriented toward Buckingham Road. The house sits back further from Buckingham Road than the adjoining properties. The property is zoned Residential, R-1, Low Density.

3. The applicant proposes to erect a privacy fence around the rear yard of the property. The fence would begin at the southwest corner at the front of the existing residence and run 24 feet south toward Union Deposit Road. At this point it would run parallel to Union Deposit Road with a setback of approximately 21 feet toward the rear of the property. It would then follow the rear property line until topography forces it to veer to the west. It then roughly parallels the northern property line until it ends at the

northwest corner of the house. The proposed fence would be 6 to 6.5 feet in height and would be a closed style of fence.

4. The applicant desires to extend the fence to the front of the existing house because the ground topography would make placing a gate in the fence difficult in the rear of the property. A privacy style fence is requested because of the desire to screen the yard from traffic on Union Deposit Road and to protect pets and children using the yard.

5. The Applicant has discussed his proposal with the neighboring property owners who had no objection to the proposal

6. Notice of the hearing was posted and advertisement made as required by the ordinance.

7. No one other than the applicant and his fiancé appeared to testify either in favor of or against the proposed variances.

### **Conclusions**

1. Section 403.D.8.c. (1) (a) of the ordinance requires that fences located within the front yard be an open-type fence. Section 403.D.8.c. (1) (b) limits the height of fences in the front yard to four feet. Section 403.D.8.c.(2) provides that on corner lots, the height of the fence that only extends beyond the rear plane of the house may exceed 4 feet in height where not in front of the house. The proposed fence would violate these sections of the ordinance.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall



be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property in question is burdened by a hardship not created by the owner consisting of its irregular topography and corner location which combine to limit the types of fences allowed. The topography of the lot requires extending the fence to the front plane of the house, where the maximum height regulations would create safety concerns.

4. Granting the variance will not alter the essential character of the neighborhood nor be contrary to the public welfare. The applicant's property sits much further back than other homes in the development, and accordingly while the fence is technically aligned with the front of the house, its visual impact is diminished by the setback. Utilizing privacy fencing in those portions of the fence within the front yard will have little visual impact for the same reason. The impact is further diminished by the fact that for much of the intrusion, the side affected is Union Deposit Road, which serves as a major traffic artery and lacks the residential character of the balance of the development.

#### **Decision**

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variances requested should be and are hereby granted allowing the erection of a privacy fence with a maximum height of 6.5 feet not to extend closer to Buckingham Road than the front plane of the existing dwelling. In all other respects, construction shall be in strict conformity with the plans


and testimony submitted to the Board.

Date: 10-11-13

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

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Richard E. Freeburn

  
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Sara Jane Cate

  
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Jeffrey W. Staub

  
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Watson Fisher